

Compensation Relating to Torture Act, 2053 (1996)

Date of Authentication and Publication

2053-9-3 (18 Dec.1996)

Act Number 14 of the year 2053 (1996)

An Act made to Provide for Compensation to the Person subjected to Torture while in Detention.

Preamble : Whereas, it is expedient to make provisions on compensation for inflicting physical or mental torture upon any person in detention in the course of investigation, inquiry or trial or for any other reason or for giving cruel, inhuman or degrading treatment to such a person;

Now, therefore, be it enacted by the Parliament in the 25th year of reign of His Majesty King Birendra Bir Bikram Shah Dev.

1. **Short Title and Commencement:** (1) This Act may be called as "Compensation Relating to Torture Act, 2053 (1996)."
(2) It shall come into force immediately.
2. **Definitions:** Unless the subject or the context otherwise requires, in this Act,-
 - (a) "Torture" means physical or mental torture inflicted upon a person in detention in the course of investigation, inquiry or trial or for any other reason and includes any cruel, inhuman or degrading treatment given to him/her.
 - (b) "Victim" means any person upon whom torture is inflicted.
3. **Prohibition on Torture:** (1) No person in detention in the course of investigation, inquiry or trial or for any other reason shall be subjected to torture.

Explanation: For the purposes of this Sub-section, the words "in detention" shall include the situation of being taken into custody in accordance with the prevailing law.

(2) In detaining and releasing any person, the concerned official shall get such person examined physically by a medical practitioner engaged in the governmental service as far as possible and him/herself examine such person in cases where no such medical practitioner is available, and maintain records thereof.

Explanation: For the purposes of this sub-section, "medical practitioner" shall include a Doctor, *Kabiraj* (Senior Ayurvedic Practitioner), health assistant, assistant health worker or *Vaidhaya* (Junior Ayurvedic Practitioner).

(3) One copy of the report on examination of physical or mental situation referred to in Sub-section (2) has to be sent to the concerned District Court.

4. **Provision of Compensation** : If any employee of Government of Nepal is held to have inflicted torture upon any person, the victim shall be provided with compensation as referred to in this Act.

5. **Filing of Complaint** : (1) A victim may, within 35 days from the date of inflicting torture upon him/her or of his/her release from detention, file with the District Court of the District, where he/she has been detained, a complaint making a claim for compensation.

(2) Notwithstanding anything contained in Sub-section (1), in the event of death of a victim or failure of the victim for any other reason to file a complaint in person, any one of his/her family members having attained the required age or his/her legal practitioner may, setting out reasons therefor, file a complaint under Sub-section (1).

(3) Any one of the detainee's family members having attained the required age or his/her legal practitioner may, if he/she thinks that torture has

been inflicted on the detainee, file a petition with the concerned District Court. If such application is filed, the court may order for physical or mental examination of the person in detention within three days. If, upon such examination, it appears that his/her medical treatment is to be done, his/her treatment shall be done on behalf of Government of Nepal.

(4) Any complaint to be filed under Sub-section (1) or (2) shall also contain the following matters, as far as possible:-

- (a) Reason for detention and period of time spent in detention.
- (b) Description of torture inflicted while in detention.
- (c) Description of loss resulted from torture.
- (d) Amount of compensation claimed.
- (e) Any other details which may be ancillary to substantiate the claim.

6. **Proceedings on Complaint and Compensation:** (1) The District Court shall proceed with a complaint filed under Section 5 by following the procedures referred to in the Summary Procedures Act, 2028 (1972), and if the contents of such complaint are found to be true and correct, make a decision requiring Government of Nepal to pay compensation in a sum not exceeding One Hundred Thousand Rupees to the victim.

(2) If, in the course of the proceedings under Sub-section (1), a complaint is held to have been made with *mala fide* intention, the complainant may be punished with a fine not exceeding Five Thousand Rupees.

7. **Action against the Person Involved in the Commission of Torture:** If it is held that torture has been inflicted as mentioned in this Act, the District Court may order the concerned body to take departmental action against the governmental employee who has inflicted such torture, in accordance with the prevailing law.

8. **Fixation of Amount of Compensation** : In fixing amount of compensation for purposes of Sub-section (1) of Section 6, it has to be fixed taking into account of the following matters :-

- (a) Physical or mental pain or suffering inflicted on the victim and its gravity.
- (b) Depreciation occurred in income-earning capacity of the victim as a consequence of physical or mental injury.
- (c) In the case of physical or mental injury of incurable nature, the age of the victim and his/her family obligation.
- (d) In the case of an injury of curable nature, estimated expenditure for its treatment.
- (e) In the event of the death of the victim as a result of torture, number of his/her family members dependent on his/her income and minimum expenditure required for their livelihood.
- (c) The matters deemed proper and just, out of the matters claimed by the victim.

9. **Execution of the Decision**: (1) After the final decision on provision of compensation to a victim, the victim or his/her nearest heir, in the event of his/her death, has to make an application, accompanied by a copy of the decision made by the District Court on provision of compensation, to the Chief District Officer of the District where the victim has been detained, for having amount of compensation within one year from the date of receipt of a notice of such decision.

(2) The Chief District Officer has to provide the amount of compensation to the applicant within thirty five days of receipt of the application referred to in Sub-section (1).

(3) No amount of compensation shall be provided if any application is not made within the time-limit referred to in Sub-section (1).

10. **Defense by Government Attorney** : The Government Attorney shall, if so requested by the concerned Office In-charge, appear in the Court on behalf of such employee and defend him/her on the complaint filed under Section 5.
11. **Not to Be Deemed Torture** : Notwithstanding anything contained elsewhere in this Act, any pain or suffering arising naturally from being detained in accordance with the prevailing law shall not be deemed to be an act of torture for the purposes of this Act.
12. **No Restriction on Taking Action under Prevailing Law**: Nothing shall be deemed to prevent the taking of separate action in such matter as may be deemed to be an offence under the prevailing law only by virtue of the fact that action has been taken under this Act for compensation for torture or that compensation has been received.
13. **Power To Frame Rules** : Government of Nepal may frame necessary Rules in order to carry out the objectives of this Act.